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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

ANTHONY DELGADO MORENO,

Defendant and Appellant.

F059031

(Super. Ct. No. VCF207340)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Tulare County. Paul Anthony Vortmann, Judge.

Jonathan E. Berger, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Michael P. Farrell, Senior Assistant Attorney General, Julie A. Hokans and Ryan B. McCarroll, Deputy Attorney Generals, for Plaintiff and Respondent.

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* Before Wiseman, Acting P.J., Gomes, J. and Hill, J.

Appellant, Anthony Delgado Moreno, appeals the judgment of conviction entered on a plea of no contest to using false citizenship documents (Pen. Code, § 114, count one) and elder abuse (Pen. Code, § 368, subd. (b)(1), count two). The court placed Moreno on probation for three years and suspended imposition of sentence. Subsequently, the court found Moreno had violated his probation by committing the offenses of which he was convicted in case number VCF218924 (appeal number F057923). The court terminated probation and imposed a five-year term for the false document count and a concurrent five-year term for the elder abuse count. Moreno contends, and the People concede, the court imposed an unauthorized sentence on the elder abuse count. We will find the error harmless under the circumstances and affirm the judgment, including the three-year concurrent sentence on count 2 as reflected in the abstract of judgment.

FACTS

On July 3, 2008, Farmersville Police Officer Daniel Villalobos saw Moreno at a convenience store wearing a badge on his belt that appeared to be a police badge. Villalobos did not recognize Moreno so he asked him for identification. Moreno handed him a resident alien identification card. Villalobos noted Moreno's name and date of birth and returned the card.

On July 23, 2008, 73-year-old Antonio Villasenor saw Moreno in a church parking lot attempting to "scam" people into giving him money for funeral expenses for his recently deceased mother. Villasenor told fellow parishioners that Moreno's story was false and not to give him money. The two men argued and Moreno sprayed Villasenor in the eyes with pepper spray. Villasenor reported the incident to the police the next day. A Farmersville police officer went to Moreno's house and arrested him. The officer found a canister of pepper spray in the room and a counterfeit resident alien identification card in Moreno's possession.

DISCUSSION

Moreno contends, and the People concede, the court erred by orally imposing a five-year prison term on the count two elder abuse offense. The amended report of the probation officer correctly stated that the available prison time for count two was two, three, or four years. (Pen. Code, § 368, subd. (b)(1).) The report recommended the court impose a concurrent sentence of the middle term of three years, but mistakenly stated in the narrative portion, that the court impose the “mandatory term of five years” on count two. The court did so and thus imposed an unauthorized term for the elder abuse offense. However, the sentencing minute order and abstract of judgment reflect the authorized concurrent three-year term.

Moreno does not claim he has been prejudiced by the court’s misstatement in light of the correct abstract of judgment. (Cal. Const., art. VI, § 13 [No judgment shall be set aside ... for any error as to any matter of procedure, unless, after an examination of the entire cause, ... the court shall be of the opinion that the error complained of has resulted in a miscarriage of justice].) And, it is not reasonably probable the trial court would impose a different sentence than that set forth in the abstract of judgment. (See e.g., *People v. Fuhrman* (1997) 16 Cal.4th 930, 945-946.)

Under the circumstances, we decline to remand for resentencing. This court notified the parties that it agreed the trial court had orally imposed an unauthorized term on count two but, because the sentencing minute order and abstract of judgment reflected an authorized three-year midterm sentence, the court intended to find the error harmless and affirm the judgment. Moreno’s counsel responded that he had no objection to the court affirming the three-year midterm sentence as reflected in the minute order and abstract of judgment. The People did not file a response. Accordingly, because the abstract of judgment reflects an authorized concurrent sentence, we will not remand for resentencing.

DISPOSITION

The judgment as reflected in the sentencing minute order and the abstract of judgment is affirmed.